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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 000183

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SUBJECT: Kenya "Crisis" Update

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CLASSIFIED BY: Mitch Benedict, Political Counselor, State, Political;
REASON: 1.4(B), (D)

¶1. (C) Summary. Neither the President nor the Prime Minister have taken decisive steps to resolve Kenya's coalition "crisis," but there are some signs of progress. At the same time as the ODM announced on February 16 a boycott of Cabinet meetings, President Kibaki then cancelled the Cabinet meeting set for February 18, thus defusing another potential flashpoint. Kofi Annan spoke with Prime Minister Odinga on February 16 and urged him to work out his differences with Kibaki. Annan is trying to reach Kibaki to deliver the same message and to make clear that he (Annan) is willing to be helpful in that process. We are urging Kibaki and Odinga to meet immediately upon Odinga's return to Kenya this coming weekend. Meanwhile, the constitutional review process continues to fester. While the ongoing "crisis" has not directly impacted on the process, PM Odinga had before the crisis indicated his intention to reopen agreements reached on the contentious issues at the Parliamentary Select Committee meetings in Naivasha. Meetings between the PSC and Committee of Experts February 16 were inconclusive. The Committee of Experts must now edit the draft new constitution and submit it to Parliament before Parliament reconvenes on February 23. The efforts being made by the U.S., Annan, and responsible representatives of civil society, the private sector, religious groups, and the media have a reasonable prospect of staving off a major crisis, though this is of course far from certain. Ethnic tensions in some communities remain high. The crisis has given some scope to hardliners on both sides to explore radical options. Agriculture Minister Ruto (who the PM had tried to suspend) is now working openly with Kibaki's team. There exists a risk that PNU hardliners could seek to sideline Odinga and govern the country with ODM defectors. However, multiple sources indicate that Kibaki has clearly rejected this option. Embassy Nairobi recommends a statement issued in Washington at this time (see para 8). End summary.

¶2. (C) This message provides an update, further to reftel, on coalition government tensions, which both sides continue to characterize as a "crisis." Late on the February 16, the ODM announced a boycott of Cabinet meetings until the dispute between President Kibaki and Prime Minister Odinga regarding suspension of the Ministers of Education and Agriculture is resolved. Kibaki then, perhaps in anticipation, cancelled the Cabinet meeting scheduled for February 18. The Ambassador called Minister of Lands James Orengo, one of the most senior ODM officials, to express concern about the plan to announce a boycott, noting that it would likely fuel already high ethnic tensions. Before the Cabinet meeting was cancelled, Minister of Agriculture Ruto and Minister of Tourism Balala (a senior ODM official who had previously joined ranks with Ruto in breaking with Odinga) had announced their intention to ignore the boycott and attend the Cabinet meeting.

¶3. (C) The Ambassador spoke with Annan late on February 16. Annan provided a readout of his conversation that day with Odinga. Annan said he urged Odinga to make public statements to help calm tensions, in order to provide time for Kibaki and Odinga to work out their differences. Annan indicated his willingness to help in

that process, but Annan did not commit to coming to Kenya at this time. Odinga went into a long discourse on the old subject of the need to define his powers as Prime Minister. He claimed he had only suspended the officials, and therefore he did not violate Kibaki's authority to appoint and dismiss ministers. As a public show of his authority to appoint officials, Kibaki announced on February 17 the appointment of four acting permanent secretaries. Kibaki on the February 16 ducked Annan's attempts to reach him, but Annan expects to reach the President soon. As he did with Odinga, Annan will urge the two principals to meet and work out their differences.

¶4. (C) Through contacts close to Odinga and Kibaki, the Ambassador is encouraging the two principals to meet immediately after Odinga's return to Kenya this weekend, and then to announce the planned meeting in order to help calm tensions. These contacts who are in close touch with Kibaki's and Odinga's teams indicate that Kibaki is not inclined to take any precipitous action. Kibaki, they say, was pleased that Odinga's team cooperated during the Parliamentary Select Committee's meeting in Naivasha, which worked out agreement on contentious issues on the constitutional review process. Kibaki, they claim, was then surprised when Odinga first backed away from the agreements reached in Naivasha and then made the unilateral announcement on suspension of the ministers.
(Comment: this may be accurate given Odinga's description to A/S Carson in their call that Odinga "assumed" that Kibaki had been briefed by his Permanent Secretary Muthaura about Odinga's intentions and "assumed" that Kibaki would go along with Odinga's action suspending the ministers. End Comment). There are now a number of key players working to put together a Kibaki-Odinga

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meeting, including Intelligence Chief Gichangi, who met with the Ambassador on February 17.

¶5. (C) Late on February 16 the Ambassador spoke with a number of media owners to urge them to work together to promote calm, including through appropriate (and balanced) editorials. The Ambassador and Mission team continue to reach out to a broad cross-section of civil society, religious groups, youth, the private sector, and the media to urge all to play responsible roles and urge Kibaki and Odinga to work out their differences.

¶6. (C) Meanwhile, the constitutional review process continues to fester. As previously reported, Odinga had - before the current crisis - already made the decision to try to walk back some of the agreements reached by the Parliamentary Select Committee at Naivasha. The PSC and Committee of Experts met all day February

¶16. The meeting revealed significant gaps between the PSC and COE, and positions seemed to harden during the course of the day. ODM PSC members sought to reopen the question of whether Kenya should have a presidential system. Significant disagreements emerged between the PSC and COE regarding what the structure of devolution should be and on other issues. The COE is now tasked with editing the draft version of the new constitution to take into account the PSC's views, and submit it to Parliament before Parliament reconvenes February 23.

¶7. (C) Ethnic tensions have been stoked by the crisis, but have not yet resulted in violence. While we and many Kenyans are reaching out to help calm tensions, it will only take a spark to ignite significant trouble. The efforts that the U.S. and Annan are making to encourage Kibaki and Odinga to work out their differences, coupled with the efforts of responsible representatives of civil society, the private sector, religious groups, and the media, have a reasonable prospect of pushing the two principals to stave off a major crisis. This is, of course, far from certain. Getting the coalition back on track and ensuring progress in the problematic constitutional review process - the most important reform agenda item - will require continued intensive engagement.

¶8. (C) A Washington-issued statement urging coalition cohesion and a focus on the essential work of adopting a new constitution to institutionalize and clarify urgent issues of governance would be very helpful and timely.

